

In the United States District Court of Delaware

Harry Samuel
Plaintiff

v.

C.A. No. 05-037-SLR

Thomas Carroll, (Warden),
Rob Young, First Correctional
Medical and Correctional
Medical Service
Defendants



Regarding Correctional Medical Services, Inc., Motion
for a Protective Order

Plaintiff requested discovery from CMS and FCM and Ophelia Waters (Department of Justice) as a informal resolution. See Exhibit - B

Plaintiff mailed a COPY of Plaintiff Discovery request to the U.S. District Court. Exhibit - B

CMS did not respond to Plaintiff in 23 days of Plaintiff request. The Plaintiff requested informal discovery from CMS in 30 days Pursuant to rule 34, Fed. R. P., Rule 33 and Rule 36.

Instead CMS move to the District for a Protective order which states Plaintiff discovery requests and any potential responses thereto by CMS are not relevant to a determination of CMS' Motion to Dismiss, which is directed to the averments in Plaintiff Complaint and whether Plaintiff, has failed to state a claim upon which relief can be granted. D.I. 85

In addition CMS request a 30 day extension from the District Court to respond to Plaintiff Discovery request. 30 days after CMS Motion to dismiss is rendered. D.I. 85

Plaintiff amended complaint and filings in District Court claim CMS delayed Plaintiff dental Treatment for 2 month (and one week) from July 1, 2005 to September 7, 2005. After Plaintiff was on the waiting list for 10 month by FCM. See Exhibit - A Fee sheet CMS use when CMS Filled / Treated Plaintiff Tooth / teeth

Plaintiff Submit the Pleadings alone are not enough to grant Summary Judgement. Plaintiff has submitted evidence insupport of Plaintiff Complaint. In addition there is evidence in the record to Support Plaintiff Claim. Pursuant to Rule 56(e) FRCP. Exhibit - A (CMS Fee for Treatment) and Date of Treatment

Plaintiff Submit Rule 56(f) Fed R. Civ. P., states that Rule 56(f) which allows a summary Judgement motion to be denied, or the hearing on the motion to be continued, if the nonmoving Party has not had an opportunity to make Full discovery.

Plaintiff understand that Pursuant to Fed. R. Civ. P., a Discovery can be in any Sequene.

Plaintiff filed a reply brief to aid the District Court in understanding the nature and bases of Plaintiff Complaint, Claims, and Pleading.

Plaintiff Submit Plaintiff Discovery request are relevant to a determination of Plaintiff Case, Claims and Defenses. Plaintiff requested Production of names, titles, Polices, of Prison officials, CMS and FCM that responded to and Who are responsible for filling Plaintiff Tooth/teeth. And their Duties and Policies on handcuffing Inmate/Plaintiff in the rear during Treatment (restrains) See Exhibit - B

Plaintiff, Submit that Plaintiff Discovery request on restraints - handcuff during Treatment do not apply to CMS as CMS did not Treat Plaintiff while Plaintiff was handcuffed. only the 2 month delay dental Claims.

Plaintiff, Submit the restraints Discovery apply to Thomas Carroll (warden) Rob Young, FCM.

Conclusion

Plaintiff ask that this Honorable U.S. District Court deny CMS Motion for a Protective order for the reasons and Rules herewithin. Plaintiff request CMS Produce Discovery that applies to CMS in the 30 days Plaintiff ask Pursuant to Rules 34, 33 and 36, Fed. R. Civ. P., unless this Court rules otherwise.

Date 9-21-2006

Respectfully Submitted
Respectfully yours Truly
Harry L. Samuel pro se

**Delaware Department of Correction
Health Care Services Fee Sheet**

Inmate Name Harry Samuel SBI # 00201360
(Last, First MI)

Facility DCC- Date 9-7-2005

<input checked="" type="checkbox"/>	Chargeable Visit	\$4.00
<input type="checkbox"/>	Non Chargeable Visit	-0-
<input type="checkbox"/>	Medication Handling Fee (\$2.00 X <u> </u>)	\$ <u> </u>

Total Amount Charged To Inmate Account \$4.00

Health Care Staff Signature: _____

I CERTIFY BY MY SIGNATURE THAT I HAVE RECEIVED THE SERVICES DESCRIBED ABOVE.

Inmate Signature: Harry Samuel Date: _____

1) *Witness Signature: _____ Date: _____

2) *Witness Signature: _____ Date: _____

The fee for services rendered will be deducted from your inmate account even if the amount deducted generates a negative balance. Any funds received by you will first be applied to any negative balance. Any negative balance remaining on your account when you are released will remain active for three (3) years after the date of release. Should you return to Delaware Department of Correction as an inmate within that three (3) year period, the negative balance will be applied to your inmate account on your new commitment.

Distribution:

Original: Facility Business Office Posted/Entered by _____ Date _____
Copy: Inmate Medical Record (yellow)
Inmate (pink)

*Only needed if inmate refuses or is unable to sign.

FORM #: 621

3 part NCR

(C:Copy 96:Form.4)

Exhibit - A

Dintist + Kathy
Filled tooth, July 1, 2005
beginning of September
2005. (CMS)

Certificate of Service

I, Harry Samuel, hereby certify that I have served a true
and correct cop(ies) of the attached: letter/motion and Exhibits
RE: CMS protective order motion upon the following
parties/person (s):

TO: Dana Spring Monze
(McCullough & McKenty, PA.)
1225 N. King Street, Suite 1100
P.O. Box 397
Wilmington, DE 19899-0397
(FCM)

TO: OPhelia M. Waters
Deputy Attorney General
State of Delaware
Department of Justice
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(warden, et al)

TO: Kevin J. Connors
(Marshall, Dennehey, Warner,
Coleman & GOGGIN)
1220 North Market Street
5th Fl. P.O. Box 8888
Wilmington, DE 19899-8888
(CMS, I)

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this 21st day of September, 2006

Harry Samuel
Pro Se

IM Harry Samuel

SBI# 201360 UNIT 23, 14, U

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977



To. Office of the Clerk
United States District Court
844 N. King Street, Lockbox 18
Wilmington, Delaware
19801-3570

legal mail

